

## Part 4 Enforcement

### **61-2e-401 Division authority -- Immunity.**

- (1)
- (a) In addition to a power or duty expressly provided in this chapter, the division may:
    - (i) receive and act on a complaint including:
      - (A) taking action designed to obtain voluntary compliance with this chapter, including the issuance of a cease and desist order if the person against whom the order is issued is given the right to petition the board for review of the order; or
      - (B) commencing an administrative or judicial proceeding on the division's own initiative;
    - (ii) investigate an entity required to be registered under this chapter, regardless of whether the entity is located in Utah;
    - (iii) employ one or more investigators, clerks, or other employees or agents if:
      - (A) approved by the executive director; and
      - (B) within the budget of the division; and
    - (iv) issue a subpoena that requires:
      - (A) the attendance and testimony of a witness; or
      - (B) the production of evidence.
  - (b)
    - (i) A court of competent jurisdiction shall enforce, according to the practice and procedure of the court, a subpoena issued by the division.
    - (ii) The division shall pay any witness fee, travel expense, mileage, or any other fee required by the service statutes of the state where the witness or evidence is located.
  - (c) A failure to respond to a request by the division in an investigation under this chapter is considered to be a separate violation of this chapter, including:
    - (i) failing to respond to a subpoena;
    - (ii) withholding evidence; or
    - (iii) failing to produce a document or record.
- (2)
- (a) If a person is found to have violated this chapter or a rule made under this chapter, the person shall pay the costs incurred by the division to copy a book, paper, contract, document, or record required under this chapter, including the costs incurred to copy an electronic book, paper, contract, document, or record in a universally readable format.
  - (b) If a person fails to pay the costs described in Subsection (2)(a) when due, the person's registration is automatically suspended:
    - (i) beginning the day on which the payment of costs is due; and
    - (ii) ending the day on which the costs are paid.
- (3) The division is immune from a civil action or criminal prosecution for initiating or assisting in a lawful investigation of an act or participating in a disciplinary proceeding under this chapter if the division takes the action:
- (a) without malicious intent; and
  - (b) in the reasonable belief that the action is taken pursuant to the powers and duties vested in the division under this chapter.

Amended by Chapter 384, 2016 General Session

## **61-2e-402 Enforcement -- Immunity for board.**

- (1)
  - (a) The board may order disciplinary action, with the concurrence of the division, against:
    - (i) an entity registered under this chapter;
    - (ii) an entity required to be registered under this chapter; or
    - (iii) a controlling person of an entity described in this Subsection (1)(a).
  - (b) If the board, with the concurrence of the division, makes a finding described in Subsection (2) pursuant to an adjudicative proceeding conducted in accordance with Title 63G, Chapter 4, Administrative Procedures Act, the board, with the concurrence of the division, may:
    - (i) revoke, suspend, or place an entity's registration on probation;
    - (ii) deny an entity's original registration;
    - (iii) deny an entity's renewal registration;
    - (iv) in the case of denial or revocation of a registration, set a waiting period for an applicant to apply for a registration under this chapter;
    - (v) order remedial education;
    - (vi) impose a civil penalty upon a person not to exceed the greater of:
      - (A) \$5,000 for each violation; or
      - (B) the amount of any gain or economic benefit from a violation;
    - (vii) issue a cease and desist order; or
    - (viii) do a combination of Subsections (1)(b)(i) through (vii).
- (2) Subsection (1) applies if the board finds, with the concurrence of the division, that a person has engaged in, is attempting to, or has attempted to engage in:
  - (a) an act that violates this chapter;
  - (b) an act that violates a rule made under this chapter;
  - (c) procuring a registration for the person or another person by fraud, misrepresentation, or deceit;
  - (d) paying money or attempting to pay money other than a fee provided for by this chapter to an employee of the division to procure a registration under this chapter;
  - (e) an act or omission in the business of an appraisal management company that constitutes dishonesty, fraud, or misrepresentation;
  - (f) unprofessional conduct as defined by statute or rule; or
  - (g) other conduct that constitutes dishonest dealing.
- (3)
  - (a) If the board, with the concurrence of the director, issues an order that orders a fine or remedial education as part of a disciplinary action against a person, including a stipulation and order, the board shall state in the order the deadline by which the person shall comply with the fine or remedial education requirements.
  - (b) If a person fails to comply by the stated deadline, the person's registration shall be immediately and automatically suspended:
    - (i) beginning the day specified in the order as the deadline for compliance; and
    - (ii) ending the day on which the person complies in full with the order.
  - (c) If a person fails to pay a fine required by an order, the division shall begin a collection process:
    - (i) established by the division by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act; and
    - (ii) subject to Title 63A, Chapter 3, Part 5, Office of State Debt Collection.
- (4) To the extent permitted by federal law, the board, with the concurrence of the division, may bring a disciplinary proceeding under this chapter for a violation of 15 U.S.C. Sec. 1639e(i).

- (5) A member of the board is immune from a civil action or criminal prosecution for a disciplinary proceeding under this chapter if:
- (a) the action is taken without malicious intent; and
  - (b) in the reasonable belief that the action taken was taken pursuant to the powers and duties vested in a member of the board under this chapter.

Amended by Chapter 369, 2012 General Session